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# Supreme Court of the United States

OCTOBER TERM, 1943

No. **182**

SCHIAVONE-BONOMO CORPORATION,

*Petitioner,*

against

BOUCHARD TRANSPORTATION COMPANY, INC.,

*Respondent,*

and

BUFFALO BARGE TOWING CORPORATION,

*Respondent-Impleaded.*

**PETITION FOR WRIT OF CERTIORARI IN THE  
UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE SECOND CIRCUIT  
AND BRIEF IN SUPPORT**

PAUL SPEER,  
*Counsel for Petitioner.*



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<i>Respondent-Impleaded.</i>	

## PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice, and the Associate  
Justices of the Supreme Court of the United States:

The petition of Schiavone-Bonomo Corporation, as owner of two cargoes of scrap iron and steel, respectfully shows to this Court as follows:

This is a petition for a writ of certiorari to review a decision, in admiralty, in the United States Circuit Court of Appeals for the Second Circuit, which reversed the decree of the United States District Court for the Southern District of New York.

The fundamental question involved in this petition is whether a cargo owner who enters into a contract of carriage with a carrier is barred from recovering from the contract carrier, damages sustained by reason of the breach of the contract, by the carrier, solely because the Court

held that the provisions of the New York Statute of Limitations applied, without also applying the limitations and curtailments imposed upon the application of the Statute of Limitations by other statutes of the State, and the asserted law thereof, or is the cargo owner's admitted right of recovery to be limited only by the well-known, long-established admiralty rule of law that there are no statutes of limitation in admiralty, and the doctrine of laches is applied in lieu thereof.

This petition is prayed for because the decision of the Circuit Court of Appeals denying petitioner's right to recover damages for the breach of the contract to transport and deliver, is in conflict with the decisions upon the same point in other Circuits, is in conflict with the law as established by this Court, and is in conflict with the law of the State of New York. The questions involved are of importance, because of their effect on the admiralty law as to the rights and obligations of shippers and carriers, especially in view of present conditions. The Circuit Court of Appeals, in its interpretation and application of a local law, has affected and placed a limitation upon the above-established principles of admiralty law.

The Schiavone-Bonomo Corporation, petitioner, is engaged in the scrap iron business, and at the time the contract involved was made, had a place of business in the City of New York, as did the other parties to this action.

It was the owner of the two cargoes of scrap iron and steel involved in this action, and which were laden on board the barges *B. M. Baker* and *Charles C. Ryan*.

On September 26, 1936, petitioner entered into a written contract of carriage with the Bouchard Transportation Company (Exhibit A, R-5), whereby the latter agreed to transport and deliver petitioner's cargoes of scrap iron and steel from alongside dock at port of loading to alongside dock at Buffalo, New York. Pursuant to this contract, petitioner's cargoes were placed on the two barges for



transportation and delivery, and they, together with several other barges, were taken in tow by a tug. The barges and tug were furnished by the carrier pursuant to contract.

During the course of the voyage, the tow struck the center abutment of a railroad bridge that crosses the New York State Barge Canal at Clyde, New York, and the two barges, with petitioner's cargoes aboard, were sunk, and the voyage abandoned. Petitioner, through its representatives, raised the cargoes, which of course, were not damaged by reason of contact with water, carried them forward to Buffalo, New York, and delivered them to the consignee. On July 10, 1940, which date was more than three years after the cause of action arose, petitioner instituted an action on the contract against Bouchard Transportation Company, Inc., seeking to recover the extra expense it incurred in raising and carrying forward the cargoes, by reason of the breach and abandonment by the carrier, of its contract to transport and deliver the cargoes.

The Bouchard Transportation Company, Inc., then appeared and filed its answer to the libel, together with a petition filed pursuant to the 56th Rule in Admiralty, impleading Buffalo Barge Towing Corporation, upon the ground that if there was any responsibility to the petitioner, it was that of Buffalo Barge Towing Corporation, because this latter company had made an exactly similar contract with Bouchard Transportation Company, Inc. on September 24, 1936 (Exhibit A, R-18), as Bouchard Transportation Company had made with petitioner on September 26, 1936. The contract made between Bouchard Transportation Company and Buffalo Barge Towing Corporation was unknown to petitioner.

The Buffalo Barge Towing Corporation appeared and filed exceptions to the libel and impleading petition (R-20), on the ground that by reason of laches, recovery could not be had against it. The exceptions were overruled in the United States District Court for the Southern District of

New York (R-21), on the ground that it was not shown that libellant was guilty of laches, in that the two elements necessary to sustain the defense of laches, namely: delay and prejudice, were not shown. The Court further held that if any statute of limitations was to be applied by analogy, it should be that dealing with contract which allows six years within which to bring an action. The Court further held that the application by analogy of a statute of limitations is only an analogy and not a rule.

Buffalo Barge Towing Corporation then filed its answers to the libel and impleading petition, setting up, among other defenses, the defense of laches, claiming not only delay, but prejudice.

Bouchard Transportation Company, Inc., has at no time offered as a defense to petitioner's libel the defense of laches, or claimed that the New York State Statute of Limitations with respect to damage to property caused by negligence, should be applied.

The action came on for trial before the Honorable JOHN BRIGHT, Judge of the District Court for the Southern District of New York. At the trial respondents were afforded the opportunity to offer full and complete defenses, did not make any contention, or offer any proof that they had been prejudiced by the delay of petitioner, in the commencement of the suit. After trial the District Court delivered an oral opinion (R-90-92), and made findings of fact and conclusions of law (R-92-97), wherein the Buffalo Barge Towing Corporation was held primarily responsible for loss sustained, and Bouchard Transportation Company, Inc., secondarily responsible by reason of its breach of contract. It was further held that the petitioner was not guilty of laches, and that if any New York statute of limitations should be applied by analogy, it should be the six-year statute covering contracts.

An interlocutory decree was entered in accordance with said decision, and Buffalo Barge Towing Corporation

appealed from the decree solely with respect to the defense of laches, abandoning its defense on the merits, together with its other defenses. The Bouchard Transportation Company, Inc. did not appeal from or file cross-assignments of error to the decree holding it responsible to the petitioner.

The Circuit Court of Appeals reversed the decision of the District Court, dismissed petitioner's libel and the impleading petition.

The only question argued on the appeal was whether or not petitioner was guilty of laches in so far as Buffalo Barge Towing Corporation was concerned.

Your petitioner presented a petition to the Circuit Court of Appeals asking for a rehearing so that the question of the point on propriety of the dismissal of the libel as to Bouchard Transportation Company, and which had never been argued before the Circuit Court of Appeals, might be heard. The Circuit Court of Appeals, after requesting briefs on certain questions, denied this petition.

The decision of the Circuit Court of Appeals as it now stands, is in conflict with this Court, the decisions in other Courts, and the law of the State of New York, and petitioner never had its day in Court, so far as it concerns the ground upon which the petition for rehearing was denied.

Dated: New York, N. Y., July 19, 1943.

SCHIAVONE-BONOMO CORPORATION,

By.....

By PAUL SPEER

*Counsel.*

State of New York, }  
 County of New York, } ss.:

PAUL SPEER, being duly sworn, deposes and says:

That he is counsel for the petitioner, Schiavone-Bonomo Corporation, and is familiar with the facts of this case; that he has read a copy of the transcript of record which accompanies this petition, being the transcript of record in the case at bar, and that he has carefully examined the foregoing petition for a writ of certiorari; that the allegations and matters stated in said petition are true to the best of his knowledge, information and belief, and that in his opinion, the petition is well-founded, and is one in which the prayer of the petitioner should be granted by this Court.

PAUL SPEER.

Sworn to before me this  
 19th day of July, 1943.

JOHN F. QUARTO,  
 Notary Public,

(Seal) Nassau County No. 1332.

N. Y. Co. Clk's No. 4—Reg. No. 4 Q 3.

Kings Co. Clk's No. 7—Reg. No. 4002.

Comm. expires March 30, 1944.

